

**The Virginia Indigent Defense Commission**  
**Commission Meeting**  
**1604 Santa Rosa Road, Suite 109**  
**Richmond, Virginia 23229**  
**August 16, 2007**

Vice Chair, Judge Alan Rosenblatt called the meeting to order at 11:10am. Quorum requirements have been met with ten Commission members in attendance. David Lett was introduced as the newest member of the Commission, appointed by the Virginia State Bar, replacing Alex Levay. Other Commission members in attendance were Maria Jankowski, Judge Edward Hanson, Carmen Williams, Karl Hade, David Walker, Chris Anderson, James Towey (designee for Delegate Dave Albo), and Steve Benjamin. Staff present included Carlos Hopkins, Diane Pearson, Danielle Ferguson, Laura Still, Executive Director, David Johnson; and Deputy Director, DJ Geiger.

Ms. Geiger reported that James Towey came on board for the last Commission meeting in May. Our statute states that if the Crime Commission chairman is also the House Courts chairman, the vice chairman of House Courts becomes the House Courts representative and the chairman of House Courts becomes the Crime Commission representative and as the Crime Commission representative, Delegate Albo has designated James Towey. The vice chairman, Delegate Kilgore, could not be here today. Senator Quayle is the Senate Courts designee for Senator Stolle, and he is a permanent designee, so we will be seeing Senator Quayle on a continuing basis, even though he's already been on the Commission, he will remain on as the Senate Courts chair.

**Mr. Benjamin moved to approve the agenda.**

**Mr. Anderson seconded the motion.**

**The motion carried.**

**Judge Hanson made a motion to approve and waive the reading of the minutes from the May 23, 2007 Commission meeting.**

**Mr. Anderson seconded the motion.**

**The motion carried.**

The next item on the agenda is the Standards of Practice.

Mr. Johnson reported that a workgroup of lawyers was put together and the pamphlet of the guide to Standards of Practice Enforcement contained in the members' binders is the product of the workgroup (which was modeled after what the State Bar had). The pamphlet will be on our website. When anyone goes to our website with a complaint, they will be directed to the complaint form in this pamphlet

which explains the steps of the procedure. Anyone who calls the office with a complaint is going to be directed to a line which will direct them to the website, if they can't access the internet, we will get their information and send them the correct form.

Mr. Johnson then introduced Danielle Ferguson as the attorney in charge of the enforcement and our Assistant Director of Training and Attorney Certification and advised that she will be working closely with Carlos Hopkins. She has hired an administrative staff person who will be starting in a couple weeks.

He went on to say that at this point the Standards of Practice have been in place since April 1<sup>st</sup> and so far we have received no complaints.

Ms. Jankowski asked if there were limitations as far as who could make a complaint.

Mr. Johnson responded that the only limitation is it can't be anonymous. It's pretty specific; it has to be about representation, referencing something from the Standards of Practice. This isn't going to impact a case that's going on, this is to see if someone remains on the court appointed list in the future.

**Judge Hanson moved to approve the proposed policy for Standards of Practice Enforcement.**

**Mr. Anderson seconded the motion.**

**The motion carried.**

The next item on the agenda is the annual report.

Ms. Geiger reported that she received feedback from Professor Shepherd and made a few changes, some technical, and some clarification. She also inserted the numbers that were missing in the initial draft which included the remaining number of certified attorneys for classifications of each case type. She had additional feedback from Judge Rosenblatt; most of the changes are technical or grammatical. These changes will be made and the report must be filed by October 1, 2007. The Commission won't be meeting again before that date but if approved we can file it with the General Assembly.

**Judge Hanson moved that the substance of the Annual Report be approved and any grammatical or stylistic changes be left to the discretion of the staff.**

**Mr. Benjamin seconded the motion.**

**The motion carried.**

The next item on the agenda is the Legislative Proposals.

Ms. Geiger stated that she sent the Legislative Proposals to the Executive Committee which serves as the Legislative Committee for the Commission. There is only one proposal in the packet. There had been some discussion in the May 23<sup>rd</sup> meeting about whether or not we needed to make an accommodation for attorneys who couldn't get appointed as co-counsel and wanted to observe instead. There was not consensus from the Commission to do that, so there is no recommendation for legislation on that.

During the 2005 session the General Assembly made some changes to the certification statute to allow judges to appoint off the certified list as long as they notify the Indigent Defense Commission about the appointment. Those who were appointed were then subsequently added to the list if they met the certification requirements.

There was a form that OES had been utilizing when a judge did appoint off the list. We have not received a lot of those forms so that tells us that there are not a lot of judges going off list to appoint on cases, but there is still a need in some jurisdictions.

What we propose is that we remove the sunset provision of the statute and leave the existing language as they changed it, which allows for judges to go off list but to notify us and fill out that same paperwork that they've been filling out. So there is still a mechanism, but we still have the list and notice when someone off list gets appointed.

She went on to say that we also added some language for clarification. Part B of the proposal is that we add some language from §19.2-163.4. We have provided the statutory language for each of these sections in the members' binders. We are amending §19.2-159 by adding language that allows for appointment of private counsel where the public defender is unable to represent the defendant because of a conflict of interest or if the appointment of other counsel is necessary for the ends of justice. That mirrors the current language that already provides for appointment in §19.2-163.4. Both changes could be contained in one bill because it's all one section of the code.

There was discussion regarding the allocation of funds and the way things operate in the administrative office and the organizational structure. Funds are distributed by office. Mr. Johnson reported that we will be getting outside help to show us the best way. He added that this will be discussed later in the meeting.

Ms. Geiger added that the appropriations act provides two line items, one of which is a grant for Alexandria. We've been working with the Department of Planning and Budget and one of the concerns is we only have one big line item appropriation. The Appropriations Act does not split out every individual office and while that's how the funding was determined at the time the office was created it's not set out in the Appropriations Act like that. She went on to say that there will be an amendment to the Appropriations Act for our section but it will just break out service program areas. For example, we've been looking at a separate line item for the enforcement of the standards of practice because that was a specific amount that was given to us by the General Assembly. There might also be a split out for the Capital Offices because

there was specific funding provided for those. It would be broken out like that but not by office.

**Judge Hanson moved to approve the legislative proposal.**

**Chris Anderson seconded the motion.**

**The motion carried with Mr. Benjamin abstaining.**

Ms. Geiger said there is a second item for the legislative report. This has not happened previously. The Department of Corrections sent us proposed legislation that they are going to have introduced before the General Assembly this year. They've asked if we have any feedback or comment on it. There are two bills which are very similar; both continue and expand pilot projects that were authorized in the 2004 Appropriations Act that is, the detention center incarceration program and the diversion center incarceration program, which are alternatives for technical parole and probation violators who score incarceration under violation guidelines. This legislation would continue the programs.

There was discussion about supporting the Department of Corrections and providing input and feedback on sentencing alternatives. Judge Rosenblatt suggested setting up a procedure with the Legislative (Executive) Committee.

**Mr. Benjamin moved that the Executive Director, Mr. Johnson and the Deputy Director, DJ Geiger be given the power to communicate with other state agencies and representatives concerning legislation in order to best present to the Commission legislation that the Commission will be asked to take a position on.**

Mr. Anderson commented that we need to be careful in this area because so much legislation gets changed before it finally gets voted on and something could have been added that's not beneficial to our clients. As we get more of these we need to be very wary that we're not giving our approval to something that could come back and hurt our clients.

**Mr. Walker seconded the motion.**

**The motion carried unanimously.**

The next item on the agenda is ARMICS.

Ms. Geiger reminded everyone that ARMICS has arisen out of some of the problems that have occurred with World Com and in private corporations. The Federal Government then made all of its agencies comply with testing all financial procedures and the ethics and values involved to ensure the integrity of the federal agencies. Now the State has applied that to all of the state agencies as well.

There are three stages of ARMICS and we are currently in stage one. The due date for the stage one deliverables is technically September 30<sup>th</sup> but because it falls on a Sunday it will be October 1<sup>st</sup>. Stage one is an assessment stage. You're assessing management philosophy, your code of ethics, values, some of your fiscal and IT processes and your risk assessment for some of your data bases and your information and data.

One of the parts of stage one is the code of ethics. We've discovered that we don't have an official code of ethics. We looked at some of the other state agencies, some agencies similar to ours, one of which is the Department of Juvenile Justice. We also looked at the requirements of what ARMICS wanted in our code of ethics.

Some of the main focuses of ARMICS are trust, confidence, and respect of everyone in the Commonwealth including clients, citizens, and other agencies. We want to be equal and fair to everyone we deal with. Provide stewardship of public resources. Make sure your staff is trained well and equipped to do their jobs. We've added a few specific for our agency, including conducting themselves in a manner consistent with the Commission's policies and procedures which includes complying with all laws of the Commonwealth. The attorneys are specifically subject to the professional rules of responsibility and the standards of practice.

Ms. Geiger went on to say Judge Rosenblatt has suggested one amendment to #4, instead of using "an evenhanded" change to "a fair" respectful and courteous manner.

**Mr. Anderson made a motion to approve the code of ethics.**

**Mr. Towey seconded the motion.**

**The motion carried.**

The next item on the agenda is the second part of ARMICS.

Ms. Geiger reported the second part of this is they want the Agency Heads and Commissions and Boards and Secretary Cabinets involved in this. For stage one we believe we have all of the tools necessary to complete the required report. We have your guidance on our strategic plan and will have additional guidance today. Ms. Still knows the fiscal needs to be assessed; she has all the tools and information for that.

We think we have enough guidance from the Commission to complete the report and have Mr. Johnson submit it on your behalf for stage one.

There was discussion about authority to do certain things without the Commission's approval. There was also discussion about being a supervisory Commission or an advisory Commission. The way the IDC is set up is as a supervisory commission. The discussion continued regarding the Commission's ability to delegate certain authorities to the staff.

**Mr. Anderson made a motion that when the ARMICS report is finished, staff email it to Commission members with a response time of four to five days. Comments will be directed to the Executive Director for discussion with the chairman, Professor Shepherd. He will then decide if there is a need to convene an Executive Committee meeting.**

**Ms. Jankowski seconded the motion.**

**The motion carried.**

The next item on the agenda is the strategic plan.

Ms. Geiger reported the subcommittee met and originally adopted the mission, vision, and goals. They added outcomes and measures to each of the goals. There was a little tweaking on some of the goals to make them more concise.

**Judge Hanson moved to approve the strategic plan components as developed by the strategic planning workgroup and authorize staff to continue working with Department of Planning and Budget for further refinements in connection with the budget process.**

**Mr. Walker seconded the motion.**

**The motion carried.**

The next item on the agenda is the training update.

Mr. Johnson reported that we had the fourth annual boot camp last month. We had seventy lawyers who participated in the program at TC Williams Law School, which went very well.

He went on to say that Carlos Hopkins went to Washington DC in early July to meet with the training director of the DC public defender office. They have an eight week program that all of their attorneys go through before they handle any cases.

What we are exploring is to start having boot camp more than once a year.

The summer internship program went very well. We had an exit questionnaire for the interns to fill out and the response was overwhelming. All but one person rated the overall experience as good or exceptional. We had a lot of comments about what they thought was good about the program. One of the questions we asked is if they were more likely to want to pursue a career as a public defender and the overwhelming response was yes.

The summer internship program was funded through carryforward money.

Mr. Johnson went on to say that we now have a total of 2041 lawyers certified for court appointed cases. Two years into this we now have a streamlined process of

recertifying lawyers which requires them only to send in a form showing that they've taken continued education.

He reported that the training room upstairs should be finished by the next Commission meeting in November.

**Judge Hanson moved that the Virginia Indigent Defense Commission convene in closed session to discuss personnel issues pursuant to the personnel exemption contained in §2.2-3711(A) (1) of the code of Virginia.**

**This meeting will be attended only by members of the Commission however, pursuant to §2.2-37(12) (F) of the code of Virginia, the Commission also requests the attendance of the Executive Director, David Johnson and the Deputy Executive Director, DJ Geiger because it is reasonable to believe that their presence will aid the Commission in its consideration of the matters which are the subjects of the closed session.**

**Mr. Benjamin seconded the motion.**

**The motion carried.**

**After reconvening into open session, Mr. Lett moved for a roll call vote asking that each member certify that to the best of his or her knowledge, during the closed session, the Commission heard, discussed, or considered only public business matters that were lawfully exempted from open meeting requirements under the Freedom of Information Act and were identified in the motion by which the closed session was convened.**

**Each member so certified.**

The first item on the agenda after reconvening from closed session is the authorization to contract with payroll services.

**Judge Hanson moved that the Commission authorize the Executive Director to contract with the Payroll Services Bureau to provide payroll related services to the Commission.**

**The motion was seconded by Mr. Anderson.**

**The motion carried.**

Judge Rosenblatt reported that there appears to be a hole in the legislation as far as certifying capital qualified attorneys. There was discussion and direction that Ms. Geiger talk with the Supreme Court and the State Bar to get their position and suggestions. From there it might go to the Legislative Subcommittee and then report back to the Commission in November.

The next item on the agenda is the report of the Budget Committee.

Mr. Johnson said there were three areas of concern and we are addressing each of them.

Ms. Geiger advised that it was required in the Appropriations Act language that the Commission develop a compensation plan. For our field offices, we utilized the entry level salaries beginning November 25<sup>th</sup> as the minimum salary for each position. We looked at existing employees in each position and provided for a few years of raises based on who is in that position and what their current salary is to determine the maximum salary ranges.

The Administrative Office was a little more difficult because we have only one person in each position. We took the person who is currently in that position and used a multiplier for every year that they have been in that position to get the lower minimum starting salary and we did the same thing on the opposite end to make sure we didn't max anyone out of the salary range and to ensure that there was some room for them to grow as well.

We then compared each position to a similar position in the executive branch agencies and made sure that it fell within the same salary range just to be sure we were consistent with what other agencies in the Commonwealth were doing.

We have also included language that says if for some reason someone is in their position for so long and the Commonwealth raises bump them out of their maximum that any additional monies over that amount would be paid as a lump sum amount and would not be added to their salary for retirement purposes. That language is used by the executive branch as well.

**Judge Hanson moved to approve the proposed compensation plan.**

**Ms. Jankowski seconded the motion.**

There was discussion about the ranges in the Deputy Public Defender salary, the Senior Assistant Public Defender salary, and the Assistant Public Defender salary. Mr. Walker suggested that the ranges be condensed.

Mr. Johnson added that if someone happens to cap out in their salary range where the state gives a raise that would move them above the max they would get it as a one-time lump payment.

The Commission made a decision to change the salary ranges. The maximum salaries for attorney positions including capital positions will be the minimum salary of the position two steps ahead of it. So an APD I the maximum salary would be \$64,636 and an APD II would be \$72,862. The Deputy would stay the same and all others would adjust to two steps ahead. The staff positions remain as is.



**Judge Hanson withdrew his motion to approve the proposed compensation plan and made an amended motion to approve the proposed compensation plan with the amendments as stated above.**

**Mr. Walker seconded the motion.**

**The motion carried.**

The next item on the agenda is the budget request to the Governor.

Mr. Johnson reported that in the Budget Committee meeting there was discussion about specific requests we might make to the Governor this year. The consensus was that we are not going to make any specific requests at this point. The need that's on the horizon for us is IT as a lot of our equipment is nearing the age where it will need to be replaced but at this point we don't know what direction to go. Unless there is a burning need this is probably not the time to be asking for something because revenues are down.

Mr. Johnson said that there were some issues regarding the civil fees and a little misunderstanding. He sent emails to the Public Defenders saying that the Commission has never taken a position dictating how to represent individual clients. The fees are civil in nature, but they're intertwined with underlying conviction. It is certainly within their discretion to do what they need to do. He suggested they get together with their traffic attorneys and proceed. Each jurisdiction is handling this differently. This is a "representing your client" issue, and he reaffirmed to the public defenders that it's their call.

Mr. Johnson went on to say that we had a quarter time Grant Administrator position and we have Rebecca Norris as our half time Lease Coordinator. Ms. Norris has taken on the Grant Administrator position and immediately has gotten us a grant for \$21,000 from the DCJS which will pay for the equipment that's going upstairs in the training room. As a condition of the grant, we will produce and provide juvenile trainings and other trainings with that equipment. This is a one time payment to buy equipment. Giving Ms. Norris that added responsibility has already paid off in a big way.

Mr. Johnson reported that McGuire Woods is showing continuing interest in trying to help us out in some way. What we're working on with them is the idea of us offering to them training and certification of their associates and in return they would offer to the courts to handle conflict cases. It's in its early stages but could turn into a good program.

Ms. Jankowski said that she had two thoughts on that, one being she didn't know that the private bar would be happy about that. The second being when she was with the ABA they had a whole project that recruited large firms to do habeas cases. There's a nationwide push by the ABA to ask big firms to take on or be co-counsel on big, more complex cases where they have the technology and the money to help pay some of the bills.

Mr. Johnson added that we've had our capital offices work with large firms. This is them looking to expand. To the point that the private bar wouldn't like it, I understand. This is a way to perhaps keep some money in the criminal fund.

The next item on the agenda is the attorney evaluations.

Mr. Johnson reported that this is the evaluation cycle we go through every year. The evaluation forms go out to the Public Defenders and are required to be returned to me by October 1<sup>st</sup>. We use these evaluations for several different things, as teaching tools but also to justify pay practice actions. We do them here in this office too. The form we use has evolved over the years and works pretty well.

There was no new business.

Ms. Geiger added a quick update on the caseload study. When the Public Defenders go to Hampton for their annual training, part of that is going to be a train the trainer for the time sheet portion of the study that will start in October. The attorneys will do this for six weeks and the rest of the staff four weeks. They will document what they spent time on every minute of their day, case and non-case related time. We're hoping for 100 percent compliance. Other previous studies they've done they had 99 to 99.5 percent compliance.

Ms. Geiger went on to say that she will be attending a caseload summit, the NLADA in San Francisco next week.

Mr. Johnson added that the caseload study is something we've been working toward for a long time. One of the questions we want answered is why do different offices have such different caseloads. We're going to be meeting with the public defenders in the management training and looking at their caseloads for the last couple years and see where they rank among the offices. The caseload study will tell us the appropriate caseloads they should be carrying.

**Judge Hanson moved to adjourn the meeting.**

**Mr. Anderson seconded the motion.**

**The motion carried.**

The meeting adjourned at 1:40 pm.

Respectfully Submitted:

Approved By:

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Diane Z. Pearson, Administrative Assistant

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David J. Johnson, Executive Director